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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218001
Party	Plaintiff Tod's S.p.A.
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Signature	/Aryn M. Emert/
Date	12/17/2015
Attachments	MOTION - PUBLIC - REDACTED.pdf(28797 bytes) RSM - PUBLIC - REDACTED - SIGNED - WITH EXHIBITS.pdf(1731361 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044
 Filed: July 8, 2013
 For Mark: TOMS
 Published in the Official Gazette: April 29, 2014

In re Registration Nos. 4,097,948; 4,192,925; 4,313,981; 4,410,344
 Registered: February 14, 2012; August 21, 2012; April 2, 2013; October 1, 2013
 For Mark: TOMS

 TOD'S S.P.A.,

Opposer,

v.

MYCOSKIE, LLC,

Applicant.

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Opposition No. 91218001

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 TOD'S S.P.A.,

Petitioner,

v.

MYCOSKIE, LLC,

Respondent.

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Cancellation No. 92061234

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PUBLIC - REDACTED

OPPOSER/PETITIONER'S MOTION TO AMEND

Upon the annexed Declaration of Richard S. Mandel and the exhibits thereto, including the proposed Amended Combined Notice of Opposition and Consolidated Cancellation Petition attached as Exhibit A to the Mandel Declaration, Opposer/Petitioner Tod's S.P.A

("Opposer/Petitioner") hereby moves for an order, pursuant to 37 C.F.R. § 2.107, T.B.M.P. § 507

and Fed. R. Civ. P. 15(a), granting Opposer/Petitioner leave to amend, and for an order, pursuant to 37 C.F.R. § 2.121(a), suspending the proceedings pending disposition of this motion and resetting the testimony period. As grounds for its motion, Opposer/Petitioner asserts that evidence developed at the recent deposition of Ms. Brigid Stevens, the designated 30(b)(6) witness for Mycoskie, LLC (“Applicant/Respondent”) on the subject of its bona fide intention to use the TOMS mark in connection with the goods identified in Application Serial No. 86/004,044 (the “Application”), revealed an additional ground for opposition. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Opposer/Petitioner also has determined to drop its dilution claim, and allegations relating to such claim are withdrawn from the amended pleading. Opposer/Petitioner has sought Applicant/Respondent’s consent to the motion, but such consent has been refused as discussed in further detail below.

MEMORANDUM IN SUPPORT OF MOTION

STATEMENT OF FACTS

The facts on which this motion is based are set forth fully in the accompanying declaration of Richard S. Mandel (“Mandel Decl.”), and are summarized briefly here for the Board’s convenience.

Opposer/Petitioner initiated this proceeding by filing a notice of opposition on August 25, 2014 against the intent-to-use application of Applicant/Respondent to register the standard character word mark TOMS for “Goods made of leather or imitations of leather, namely, card wallets, clutch bags, clutch purses, cosmetic bags sold empty, cosmetic cases sold empty, key

bags, key cases, key wallets, and luggage; bags, namely, all-purpose carrying bags, all-purpose athletic bags, and backpacks; trunks; valises; suitcases; tote bags; travelling bags; garment bags for travel; rucksacks; satchels; holdalls; handbags; shoulder bags; canvas shopping bags; wheeled shopping bags and purses; jewelry pouches; wallets; credit card holders of leather and imitations of leather; pochettes; luggage label holders and tags; collars for pets; and leashes for animals” in International Class 18. Mandel Decl. ¶ 2. The notice of opposition alleged a likelihood of confusion with and dilution of Opposer/Petitioner’s TOD’S mark.

On December 11, 2014, Opposer/Petitioner served Applicant/Respondent with Opposer’s First Set of Interrogatories and Request for Production of Documents and Things. Mandel Decl. ¶ 3. Applicant/Respondent served its responses to discovery on February 17, 2015. Id. and Exhibit B. Applicant/Respondent made an extensive production of documents, including with respect to its use and/or intended use of the TOMS mark on handbags, but failed to produce any documents reflecting its bona fide intention to use the TOMS mark with respect to many of the Class 18 products covered by the Application. Mandel Decl. ¶ 4 and Exhibit B. Moreover, Applicant/Respondent conceded in its responses that the only steps it took with regard to its intended use of the TOMS mark in connection with the goods set forth in the Application were with respect to its handbags (Response to Interrogatory No. 14). Id.

On April 8, 2015, Opposer/Petitioner filed a Consolidated Petition for Cancellation against Applicant/Respondent’s registrations for the standard character word mark TOMS for a variety of goods and services in Classes 9, 25 and 35, also alleging a likelihood of confusion and dilution. Mandel Decl. ¶ 5. Thereafter, on May 27, 2015, Opposer/Petitioner filed a consented motion to consolidate the cancellation and opposition proceedings, which the Board granted on May 28, 2015. Id.

On October 1, 2015, during the discovery period of the consolidated proceeding, Opposer/Petitioner served Opposer/Petitioner's 30(b)(6) Notice of Deposition of Mycoskie, LLC. Mandel Decl. ¶ 6. Applicant/Respondent designated Ms. Brigid Stevens as the 30(b)(6) witness for several topics contained in Opposer/Petitioner's Notice of Deposition, including Applicant/Respondent's bona fide intent to use the TOMS mark on each of the products listed in the Application. Id.

Thereafter, on November 20, 2015, Opposer/Petitioner took the deposition of Ms. Brigid Stevens both in her individual capacity and as a 30(b)(6) designee for Applicant/Respondent.

Mandel Decl. ¶ 7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the deposition testimony of Applicant/Respondent's designated 30(b)(6) witness, and after reviewing the deposition transcript which Opposer/Petitioner received on December 7, 2015, Opposer/Petitioner's counsel wrote to Applicant/Respondent's counsel on December 10, 2015 seeking consent to a proposed amendment dropping its dilution claim and adding Applicant/Petitioner's lack of a bona fide intention to use the TOMS mark in connection with key bags, key wallets, garment bags for travel, wheeled shopping bags and purses, jewelry pouches, and leashes for animals as an additional ground of opposition. Mandel Decl. ¶ 8. Applicant/Respondent's counsel responded that his client was only willing to provide consent to the amendment of the pleading subject to Opposer/Petitioner's agreement to certain conditions,

including an extension of the discovery period by 30 days to allow Applicant/Respondent time to take an oral deposition in New York of Opposer/Petitioner's Co-CEO, Stefano Sincini. As Mr. Sincini resides in Italy, has no plans to travel to the United States within the next thirty days and in any event has no knowledge concerning the subject of the amendment, which relates solely to Applicant/Respondent's own state of mind and intentions, Opposer/Petitioner did not agree to Applicant/Respondent's request. Mandel Decl. ¶ 9. Opposer/Petitioner offered to extend the discovery period to allow time for Applicant/Respondent to obtain a deposition of Mr. Sincini by written question, as permitted by the rules, but emphasized that such issue should have no bearing on the wholly separate question of the proposed amendment. *Id.* Applicant/Respondent rejected that offer and refused to consent to the amendment, leading to the present motion. *Id.*

ARGUMENT

OPPOSER/PETITIONER'S MOTION TO AMEND SHOULD BE GRANTED

"Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court." 37 C.F.R. § 2.107. Pursuant to Fed. R. Civ. P. 15(a), leave to amend "shall be freely given when justice so requires." Consistent with this standard, the Board "has recognized that 'amendments to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties.'" Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, 26 U.S.P.Q.2d 1503, 1505 (TTAB 1993) (quoting American Optical Corp. v. American Olean Tile Co., Inc., 168 U.S.P.Q. 471, 473 (TTAB 1971)). See also Polaris Industries v. DC Comics, 59 U.S.P.Q.2d 1798, 1799 (TTAB 2001); Boral Ltd. v. FMC Corp., 59 U.S.P.Q.2d 1701 (TTAB 2000).

In the present case, the amendment is plainly in keeping with existing law, which recognizes that the absence of any documentary evidence on part of an applicant regarding its intent to use a mark “is sufficient to prove that applicant lacks a bona fide intention to use its mark in commerce as required by Section 1(b).” Commodore Electronics, 26 U.S.P.Q.2d at 1507. In response to Opposer/Petitioner’s discovery requests, Applicant/Respondent failed to produce any documents concerning its bona fide intention to use the TOMS mark in connection with various of the Class 18 goods covered by the Application. Mandel Decl. ¶ 4, and Exhibit B. Moreover, at the November 20, 2015 deposition of Ms. Stevens, Applicant/Respondent’s designated 30(b)(6) witness on the topic of Applicant/Respondent’s bona fide intention to use its TOMS mark, [REDACTED]

[REDACTED] Accordingly, Applicant/Respondent’s deposition testimony provides Opposer/Petitioner with a clear basis on which to assert as an additional ground of opposition that Applicant/Respondent lacked a bona fide intention to use the TOMS mark at the time that it filed the Application with respect to key bags, key wallets, garment bags for travel, wheeled shopping bags and purses, jewelry pouches, and leashes for animals.¹

¹Opposer/Petitioner also will use the amendment as an opportunity to withdraw its dilution claim, which it no longer intends to pursue following the completion of discovery. An amendment is not necessary to effect this change, as Opposer/Petitioner can simply choose not to pursue claims at trial. See, e.g., Rodale, Inc. v. Healthy Heart Review, Inc., Opp. No. 91151405 and 91151406, <http://ttabvue.uspto.gov/ttabvue/v?pno=91151405&pty=OPP&eno=26> (Docket No. 26) at 3 n. 1 & 5-7 (T.T.A.B. Feb. 23, 2004) (treating claims expressly dropped in motion to amend as withdrawn and not considered even though motion to amend seeking to add new

Applicant/Respondent can make no claim of prejudice. Opposer/Petitioner has acted diligently in seeking such amendment promptly upon the receipt and review of the deposition transcript of Ms. Stevens. Mandel Decl. ¶ 8 and Exhibit E. When Applicant/Respondent's counsel refused to consent to the amendment unless Opposer/Petitioner made various concessions unrelated to the amendment, Opposer/Petitioner chose to file this motion. Mandel Decl. ¶ 9. Because the facts relating to the additional ground of opposition/cancellation relate solely to Applicant/Respondent's own intentions, there is no additional discovery required on Applicant/Respondent's part or other undue burden imposed by the amendment. Mandel Decl. ¶ 10. Given the absence of any prejudice to Applicant/Respondent, the motion to amend should be granted. See, e.g., Polaris Industries, 59 U.S.P.Q.2d at 1800; United States Olympic Committee v. O-M Bread Inc., 26 U.S.P.Q.2d 1221, 1223 (TTAB 1993).

In order to permit sufficient time for the Board to decide Opposer/Petitioner's motion prior to the onset of the testimony periods, thereby ensuring that the parties have full notice of the actual issues to be tried, Opposer/Petitioner also respectfully requests, pursuant to 37 C.F.R. § 2.121(a)(1), that the proceedings be suspended pending disposition of this motion and that the testimony periods be reset by the Board following its decision on Opposer/Petitioner's motion to amend.

claims denied). However, inasmuch as Opposer/Petitioner is otherwise amending to add a claim, it withdraws the allegations concerning dilution so that the pleading can reflect the issues it actually intends to try. Applicant/Respondent's apparent concerns regarding the impact of Opposer/Petitioner's decision on the survey evidence to be presented (all of which relates solely to likelihood of confusion, not dilution) can be addressed to the extent necessary as part of any substantive rulings concerning such survey evidence, but have no bearing on the present motion.

CONCLUSION

For the foregoing reasons, Opposer/Petitioner respectfully requests that the Board issue an order granting Opposer/Petitioner's leave to serve and file its Amended Combined Notice of Opposition and Consolidated Petition to Cancel in the form annexed as Exhibit A to the accompanying Mandel Declaration, and re-setting the testimony periods following Applicant's service of an answer to the Amended Combined Notice of Opposition and Consolidated Petition to Cancel.

Dated: New York, New York
December 17, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer/Petitioner

By: /Aryn M. Emert/
Richard S. Mandel
Aryn M. Emert
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Opposer/Petitioner's Motion to Amend and Declaration of Richard S. Mandel, along with the supporting exhibits, was served upon Applicant/Respondent's counsel of record on December 17, 2015 by first class mail, postage prepaid addressed to:

Louis S. Ederer, Esq.
Arnold & Porter LLP
399 Park Avenue
New York, New York 10022

/Aryn M. Emert/
Aryn M. Emert

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044
Filed: July 8, 2013
For Mark: TOMS
Published in the Official Gazette: April 29, 2014

In re Registration Nos. 4,097,948; 4,192,925; 4,313,981; 4,410,344
Registered: February 14, 2012; August 21, 2012; April 2, 2013; October 1, 2013
For Mark: TOMS

TOD'S S.P.A.,

Opposer,

v.

MYCOSKIE, LLC,

Applicant.

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Opposition No. 91218001

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TOD'S S.P.A.,

Petitioner,

v.

MYCOSKIE, LLC,

Respondent.

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Cancellation No. 92061234

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**DECLARATION OF RICHARD S. MANDEL IN SUPPORT OF
OPPOSER/PETITIONER'S MOTION TO AMEND**

RICHARD S. MANDEL, pursuant to 28 U.S.C. §1746, declares:

1. I am a shareholder of Cowan, Liebowitz & Latman, P.C., attorneys for
Opposer/Petitioner Tod's S.p.A ("Opposer/Petitioner"). I submit this declaration in support of

Opposer/Petitioner's motion to amend. Pursuant to T.B.M.P. § 507.01, a signed copy of the proposed Amended Combined Notice of Opposition and Consolidated Petition to Cancel, along with redlines showing the changes between the Notice of Opposition and the Consolidated Petition to Cancel are attached hereto as Exhibit A.

2. The opposition in this matter commenced on August 25, 2014 when Opposer/Petitioner filed a notice of opposition against the intent-to-use application, Application Serial No. 86/004,044 (the "Application"), of Applicant/Respondent Mycoskie, LLC ("Applicant/Respondent") to register the standard character word mark TOMS for "Goods made of leather or imitations of leather, namely, card wallets, clutch bags, clutch purses, cosmetic bags sold empty, cosmetic cases sold empty, key bags, key cases, key wallets, and luggage; bags, namely, all-purpose carrying bags, all-purpose athletic bags, and backpacks; trunks; valises; suitcases; tote bags; travelling bags; garment bags for travel; rucksacks; satchels; holdalls; handbags; shoulder bags; canvas shopping bags; wheeled shopping bags and purses; jewelry pouches; wallets; credit card holders of leather and imitations of leather; pochettes; luggage label holders and tags; collars for pets; and leashes for animals" in International Class 18. The notice of opposition alleged a likelihood of confusion with and dilution of Opposer/Petitioner's TOD'S mark.

3. On December 11, 2014, Opposer/Petitioner served Applicant/Respondent with Opposer's First Set of Interrogatories and Request for Production of Documents and Things. In February 2015, Applicant/Respondent served its responses to Opposer/Petitioner's discovery requests. A copy of the relevant interrogatory responses and documents request responses are attached hereto as Exhibit B.

4. Applicant/Respondent made an extensive document production of many thousands of pages, including various documents relating to its use or intended use of the TOMS mark in connection with handbags. However, the production failed to include any documents reflecting its bona fide intention to use the TOMS mark either prior to or after the date it filed the Application in connection with many of the Class 18 goods covered by the Application. Moreover, Applicant/Respondent conceded in its responses that the only steps it took with regard to its intended use of the TOMS mark in connection with the goods set forth in the Application was with respect to its handbags. See Exhibit B (response to interrogatory no. 14).

5. On April 8, 2015, Opposer/Petitioner filed a Consolidated Petition for Cancellation against Applicant/Respondent's registrations for the standard character word mark TOMS for a number of goods and services in Classes 9, 25 and 35, alleging a likelihood of confusion and dilution. Thereafter, on May 27, 2015, Opposer/Petitioner filed a consented motion to consolidate the opposition and cancellation proceedings, and the Board granted the motion on May 28, 2015.

6. On October 1, 2015, during the discovery period of the consolidated proceeding, Opposer/Petitioner served Opposer/Petitioner's 30(b)(6) Notice of Deposition of Mycoskie, LLC, a copy of which is attached as Exhibit C. Applicant/Respondent designated Ms. Brigid Stevens as the 30(b)(6) witness for several topics contained in Opposer/Petitioner's Notice of Deposition, including topic numbers 13 -15, which related to Applicant/Respondent's bona fide intent to use its TOMS mark in connection with the goods covered by the Application.

7. On November 20, 2015, Opposer/Petitioner took the deposition of Ms. Brigid Stevens in both her individual capacity and as a designated 30(b)(6) representative. At her deposition, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Relevant excerpts of Applicant's deposition testimony are attached hereto as Exhibit D.

8. On December 7, 2015, I received a copy of the transcript of Ms. Steven's deposition testimony. Based on Ms. Steven's deposition testimony as the company's 30(b)(6) representative [REDACTED]

[REDACTED] Opposer/Petitioner concluded that it had a valid additional ground of opposition based on lack of bona fide intention with respect to such goods. I emailed Applicant's counsel, Louis Ederer, on December 10, 2015 seeking his consent to the proposed amendment reflected in Exhibit A to this declaration. In addition to adding the claim based on lack of bona fide intent, the amendment also dropped Opposer/Petitioner's dilution claims, which it had determined not to pursue at trial following the completion of discovery.

9. On December 11, 2015, I received an email from Mr. Ederer advising that he would discuss the matter with his client. Thereafter, on December 14, 2015, I received another email from Mr. Ederer stating that his client would only consent to the amendment of the pleading if, among other things, Opposer/Petitioner agreed to extend the discovery period 30 days to allow time for Applicant/Petitioner to take an oral deposition in New York of Opposer/Petitioner's Co-CEO, Stefano Sincini. As Mr. Sincini resides in Italy, has no plans to travel to the United States within the next thirty days and in any event has no knowledge concerning the subject of the proposed amendment, which relates solely to Applicant/Respondent's own state of mind and intentions, I indicated Opposer/Petitioner would

not agree to Mr. Ederer's conditions. I offered to extend the discovery period as might be necessary to permit Applicant/Respondent to take Mr. Sincini's deposition on written questions, as provided for by the rules, but explained that such issue should have no bearing on the wholly unrelated issue of the proposed amendment. Applicant/Respondent rejected that offer and refused to consent to the amendment, leading to the present motion.

10. Because Opposer/Petitioner's proposed amendment relates solely to Applicant/Respondent's own state of mind and intentions, it is respectfully submitted that the amendment will not require any additional discovery on Applicant/Respondent's part and that no adjustment to the schedule for completion of fact discovery is necessary. However, in order to provide the Board with sufficient time to decide the motion in advance of the testimony periods and thereby ensure that the parties will have full notice of the issues to be tried when presenting their cases, Opposer/Petitioner requests that the suspend the proceedings pending the disposition of the motion to amend and reset the testimony periods following its decision on the motion to amend.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT. EXECUTED ON DECEMBER 17, 2015 AT NEW YORK, NEW YORK.


RICHARD S. MANDEL

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044 and Registration Nos. 4,097,948; 4,192,925; 4,313,981; 4,410,344

Filed: July 8, 2013 and Registered: February 14, 2012; August 21, 2012; April 2, 2013; October 1, 2013

For Mark: TOMS

Published in the Official Gazette: April 29, 2014

TOD'S S.P.A.,

Opposer/Petitioner,

v.

MYCOSKIE, LLC,

Applicant/Respondent.

: Opposition/Cancellation No.
:
: **AMENDED COMBINED**
: **NOTICE OF OPPOSITION**
: **AND CONSOLIDATED**
: **CANCELLATION PETITION**

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer/Petitioner Tod's S.p.A., an Italian joint stock company located at Via Filippo Della Valle, 1, Sant'Elpidio A Mare, Ascoli Piceno, 63019, ITALY, believes that it would be damaged by: (1) registration of the TOMS mark ("Applicant/Respondent's Mark") shown in Serial No. 86/004,044 filed July 8, 2013 (the "Application"); and (2) registration of Applicant/Respondent's Mark shown in Registration Nos. 4,097,948; 4,192,925; 4,313,981 and 4,410,344 (the "Registrations"), and having been granted an extension of time to oppose the Application up to and including August 27, 2014, hereby opposes the Application and hereby petitions to cancel the Registrations.


As grounds for opposition and cancellation, it is alleged that:





1. For many years, Opposer/Petitioner, including its affiliated and related companies (collectively, “Opposer/Petitioner”), has been in the business of selling apparel, including shoes and children’s shoes, bags, eyewear and other goods and accessories and providing retail stores services and online retail store services.

2. Since well prior to Applicant/Respondent’s filing of the Application and the applications that matured into the Registrations at issue in this proceeding or any use by Applicant/Respondent of Applicant/Respondent’s Mark in connection with the goods and services covered by the Application and the Registrations, Opposer/Petitioner has used the mark TOD’S in connection with a wide variety of goods and services, including various goods and services in Classes 9, 18, 25 and 35.

3. As a result of the extensive sales and promotion of its goods and services bearing or offered in connection with Opposer/Petitioner’s TOD’S mark, Opposer/Petitioner has built up highly valuable goodwill in the TOD’S mark, and said goodwill has become closely and uniquely identified and associated with Opposer/Petitioner.

4. Opposer/Petitioner is the owner of several federal trademark registrations for marks containing the TOD’S mark together with other words and/or design elements, including the following registrations which were obtained prior to the filing date of the Application:

Mark	Reg. No.	Intl. Class	Reg. Date
	2,749,125	16, 18, 25, 35	Aug. 12, 2003

	1,459,226	18, 25	Sept. 29, 1987
	3,602,493	25	April 7, 2009
	3,831,949	3, 8, 9, 14, 16, 19, 20, 21, 24, 35	Aug. 10, 2010
	4,036,992	9, 14, 18, 25	Oct. 11, 2011
TOD'S SIGNATURE	4,333,244	3, 9, 14, 18, 25	May 14, 2013

5. On February 14, 2012, the United States Patent and Trademark Office (“USPTO”) issued Applicant/Respondent Registration No. 4,097,948 for Applicant/Respondent’s Mark for “clothing, namely, one piece garments for infants and babies” in International Class 25. Applicant/Respondent filed the application that matured into such registration on December 2, 2010 and claims a date of first use of November 15, 2008.

6. On August 21, 2012, the USPTO issued Applicant/Respondent Registration No. 4,192,925 for Applicant/Respondent’s Mark for “sunglasses and cases for sunglasses” in International Class 9. Applicant/Respondent filed the application that matured into such registration on June 6, 2011 and claims a date of first use of June 7, 2011.

7. On April 2, 2013, the USPTO issued Applicant/Respondent Registration No. 4,313,981 for Applicant/Respondent’s Mark for “eyewear, namely, sunglasses, eyeglasses and

ophthalmic frames and cases therefore” in International Class 9. Applicant/Respondent filed the application that matured into such registration on October 13, 2011 and claims a date of first use of June 6, 2011.

8. On October 1, 2013, the USPTO issued Applicant/Respondent Registration No. 4,410,344 for Applicant/Respondent’s Mark for “on-line retail store services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters; retail stores services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters” in International Class 35. Applicant/Respondent filed the application that matured into the registration on January 23, 2013 and claims a date of first use of May 15, 2006.

9. Upon information and belief, on July 8, 2013, Applicant/Respondent filed an intent-to-use application in the USPTO, Serial No. 86/004,044, to register the mark TOMS for “Goods made of leather or imitations of leather, namely, card wallets, clutch bags, clutch purses, cosmetic bags sold empty, cosmetic cases sold empty, key bags, key cases, key wallets, and luggage; bags, namely, all-purpose carrying bags, all-purpose athletic bags, and backpacks; trunks; valises; suitcases; tote bags; travelling bags; garment bags for travel; rucksacks; satchels; holdalls; handbags; shoulder bags; canvas shopping bags; wheeled shopping bags and purses; jewelry pouches; wallets; credit card holders of leather and imitations of leather; pochettes; luggage label holders and tags; collars for pets; and leashes for animals” in International Class 18.

10. Upon information and belief, Applicant/Respondent has not used Applicant/Respondent’s Mark in connection with key bags, key wallets, garment bags for travel, wheeled shopping bags and purses, jewelry pouches, and leashes for animals to date.

11. Upon information and belief, Applicant/Respondent did not have a bona fide intent to use Applicant/Respondent's Mark in commerce on the products set forth in Paragraph 10 above when it filed the Application.

12. Upon information and belief, Applicant/Respondent has no documents establishing its bona fide intent to use Applicant/Respondent's Mark on the products set forth in Paragraph 10 above.

13. Upon information and belief, Applicant/Respondent has no concrete plans of any kind to use the products set forth in Paragraph 10 above.

14. The goods and services offered by Applicant/Respondent under Applicant/Respondent's Mark are identical and/or closely related to the goods and services offered by Opposer/Petitioner under Opposer/Petitioner's TOD'S mark.

15. Applicant/Respondent's Mark so resembles Opposer/Petitioner's TOD'S mark as to be likely, when used in connection with the applied for goods and services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant/Respondent's goods and services have their origin with Opposer/Petitioner and/or that such goods and services are approved, endorsed or sponsored by Opposer/Petitioner or associated in some way with Opposer/Petitioner.

16. Applicant/Respondent is being injured by the Application and the Registrations because Applicant/Respondent's Mark so resembles Opposer/Petitioner's TOD'S mark as to be likely, when used in connection with Applicant/Respondent's goods and services, (a) to cause confusion, or to cause mistake, or to deceive; (b) to falsely suggest a connection with Opposer/Petitioner and/or its TOD'S branded goods and services; (c) to damage

Opposer/Petitioner's valuable goodwill in its TOD'S mark; and (d) to interfere with Opposer/Petitioner's own use and exploitation of its TOD'S mark.

WHEREFORE, Opposer/Petitioner, by its attorneys, respectfully requests that its opposition and cancellation petition be sustained and the Application be denied and the Registrations be cancelled.

Dated: New York, New York
December 17, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer/Petitioner

By: /Richard S. Mandel/
Richard S. Mandel
Aryn M. Emert
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Amended Combined Notice of Opposition and Consolidated Cancellation Petition was served upon the correspondent for the opposed application by mailing a copy thereof by first class mail, postage prepaid, on December 17, 2015 addressed as follows:

Louis S. Ederer
Arnold & Porter LLP
399 Park Ave.
New York, NY 10022

/Aryn M. Emert/
Aryn M. Emert

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044 and Registration Nos. 4,097,948; 4,192,925; 4,313,981; 4,410,344

Filed: July 8, 2013 and Registered: February 14, 2012; August 21, 2012; April 2, 2013; October 1, 2013

For Mark: TOMS

Published in the Official Gazette: April 29, 2014

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TOD'S S.P.A.,	—	—	:	
		Opposer,	—	: Opposition No.
v.			—	: <u>NOTICE OF OPPOSITION</u>
MYCOSKIE, LLC,	—	—	:	
		Applicant,	—	:

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<u>TOD'S S.P.A.,</u>	:	<u>Opposition/Cancellation No.</u>
<u>Opposer/Petitioner,</u>	:	
<u>v.</u>	:	<u>AMENDED COMBINED</u>
<u>MYCOSKIE, LLC,</u>	:	<u>NOTICE OF OPPOSITION</u>
<u>Applicant/Respondent,</u>	:	<u>AND CONSOLIDATED</u>
	:	<u>CANCELLATION PETITION</u>

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer/Petitioner Tod's S.p.A., an Italian joint stock company located at Via Filippo Della Valle, 1, Sant'Elpidio A Mare, Ascoli Piceno, 63019, ITALY, believes that it would be

damaged by: (1) registration of the TOMS mark (“Applicant/Respondent’s Mark”) shown in Serial No. 86/004,044 filed July 8, 2013 (the “Application”); and (2) registration of Applicant/Respondent’s Mark shown in Registration Nos. 4,097,948; 4,192,925; 4,313,981 and 4,410,344 (the “Registrations”), and having been granted an extension of time to oppose the Application up to and including August 27, 2014, hereby opposes same the Application and hereby petitions to cancel the Registrations.






As ~~ground~~grounds for opposition and cancellation, it is alleged that:

1. For many years, Opposer/Petitioner, including its affiliated and related companies (collectively, “Opposer/Petitioner”), has been in the business of selling apparel, including shoes and children’s shoes, bags, eyewear and other goods and accessories and providing retail stores services and online retail store services.

2. Since well prior to Applicant/Respondent’s filing of ~~its application for the mark~~the Application and the applications that matured into the Registrations at issue in this proceeding, ~~Opposer~~or any use by Applicant/Respondent of Applicant/Respondent’s Mark in connection with the goods and services covered by the Application and the Registrations. Opposer/Petitioner has used the mark TOD’S in connection with a wide variety of goods and services, including various goods ~~in Class 18~~and services in Classes 9, 18, 25 and 35.

3. As a result of the extensive sales and promotion of its goods and services bearing or offered in connection with Opposer/Petitioner’s TOD’S mark, Opposer/Petitioner has built up highly valuable goodwill in the TOD’S mark, and said goodwill has become closely and uniquely identified and associated with Opposer/Petitioner.

4. Opposer/Petitioner is the owner of several federal trademark registrations for marks containing the TOD'S mark together with other words and/or design elements, including the following registrations which were obtained prior to the filing date of the Application:

Mark	Reg. No.	Intl. Class	Reg. Date
	2,749,125	16, 18, 25, 35	Aug. 12, 2003
	1,459,226	18, 25	Sept. 29, 1987
	3,602,493	25	April 7, 2009
	3,831,949	3, 8, 9, 14, 16, 19, 20, 21, 24, 35	Aug. 10, 2010
	4,036,992	9, 14, 18, 25	Oct. 11, 2011
TOD'S SIGNATURE	4,333,244	3, 9, 14, 18, 25	May 14, 2013

5. On February 14, 2012, the United States Patent and Trademark Office
(“USPTO”) issued Applicant/Respondent Registration No. 4,097,948 for
Applicant/Respondent’s Mark for “clothing, namely, one piece garments for infants and babies”

in International Class 25. Applicant/Respondent filed the application that matured into such registration on December 2, 2010 and claims a date of first use of November 15, 2008.

6. On August 21, 2012, the USPTO issued Applicant/Respondent Registration No. 4,192,925 for Applicant/Respondent's Mark for "sunglasses and cases for sunglasses" in International Class 9. Applicant/Respondent filed the application that matured into such registration on June 6, 2011 and claims a date of first use of June 7, 2011.

7. On April 2, 2013, the USPTO issued Applicant/Respondent Registration No. 4,313,981 for Applicant/Respondent's Mark for "eyewear, namely, sunglasses, eyeglasses and ophthalmic frames and cases therefore" in International Class 9. Applicant/Respondent filed the application that matured into such registration on October 13, 2011 and claims a date of first use of June 6, 2011.

8. On October 1, 2013, the USPTO issued Applicant/Respondent Registration No. 4,410,344 for Applicant/Respondent's Mark for "on-line retail store services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters; retail stores services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters" in International Class 35. Applicant/Respondent filed the application that matured into the registration on January 23, 2013 and claims a date of first use of May 15, 2006.

9. ~~5.~~ Upon information and belief, on July 8, 2013, Applicant/~~Respondent~~ filed an intent-to-use application in the ~~United States Patent and Trademark Office~~ USPTO, Serial No. 86/~~004,044 (the "Application")~~, 004,044, to register the mark TOMS (~~"Applicant's Mark"~~) for "Goods made of leather or imitations of leather, namely, card wallets, clutch bags, clutch purses, cosmetic bags sold empty, cosmetic cases sold empty, key bags, key cases, key wallets, and

luggage; bags, namely, all-purpose carrying bags, all-purpose athletic bags, and backpacks; trunks; valises; suitcases; tote bags; travelling bags; garment bags for travel; rucksacks; satchels; holdalls; handbags; shoulder bags; canvas shopping bags; wheeled shopping bags and purses; jewelry pouches; wallets; credit card holders of leather and imitations of leather; pouchettes; luggage label holders and tags; collars for pets; and leashes for animals⁵ in International Class 18.

10. Upon information and belief, Applicant/Respondent has not used Applicant/Respondent's Mark in connection with key bags, key wallets, garment bags for travel, wheeled shopping bags and purses, jewelry pouches, and leashes for animals to date.

11. Upon information and belief, Applicant/Respondent did not have a bona fide intent to use Applicant/Respondent's Mark in commerce on the products set forth in Paragraph 10 above when it filed the Application.

12. Upon information and belief, Applicant/Respondent has no documents establishing its bona fide intent to use Applicant/Respondent's Mark on the products set forth in Paragraph 10 above.

13. Upon information and belief, Applicant/Respondent has no concrete plans of any kind to use the products set forth in Paragraph 10 above.

14. 6-The goods and services offered by Applicant/Respondent under Applicant/Respondent's Mark are identical and/or closely related to the goods and services offered by Opposer/Petitioner under Opposer/Petitioner's TOD'S mark.

15. 7-Applicant/Respondent's Mark so resembles Opposer/Petitioner's TOD'S mark as to be likely, when used in connection with the applied for goods and services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that

Applicant/Respondent's goods and services have their origin with Opposer/Petitioner and/or that such goods and services are approved, endorsed or sponsored by Opposer/Petitioner or associated in some way with Opposer/Petitioner.

~~8. Opposer's TOD'S mark is distinctive and famous and has enjoyed such distinctiveness and fame since long prior to Applicant's filing of the Application.~~

~~9. Applicant's Mark is likely to dilute the distinctiveness of Opposer's famous TOD'S Mark by blurring.~~

~~16. 10. Opposer would be~~ Applicant/Respondent is being injured by the granting to Applicant of a registration for Applicant's Mark for the goods recited in the Application and the Registrations because ~~such mark~~ Applicant/Respondent's Mark so resembles Opposer/Petitioner's TOD'S mark as to be likely, when used in connection with Applicant/Respondent's goods and services, (a) to cause confusion, or to cause mistake, or to deceive; (b) to falsely suggest a connection with Opposer/Petitioner and/or its TOD'S branded goods and services; (c) to damage Opposer/Petitioner's valuable goodwill in its TOD'S mark; and (d) to interfere with Opposer/Petitioner's own use and exploitation of its TOD'S mark; ~~and (e) to dilute the distinctiveness of Opposer's TOD'S mark.~~

WHEREFORE, Opposer/Petitioner, by its attorneys, respectfully requests that its opposition and cancellation petition be sustained and the ~~application for registration~~ Application be denied and the Registrations be cancelled.

Dated: New York, New York

August 25, 2014

December 17, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer/Petitioner

By: /Richard S. Mandel/

Richard S. Mandel

~~Lindsay M. Rodman~~ Aryn M. Emert

1133 Avenue of the Americas

New York, New York 10036-6799

(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Amended Combined Notice of Opposition and Consolidated Cancellation Petition was served upon the correspondent for the opposed application by mailing a copy thereof by first class mail, postage prepaid, on ~~August 25,~~ 2014December 17, 2015 addressed as follows:

Louis S. Ederer, ~~Esq.~~

Arnold & Porter LLP
~~555 12th St NW, Suite 100~~
~~Washington, D.C. 20004-1206~~
399 Park Ave.
New York, NY 10022

~~_____/Richard S. Mandel/~~
~~____RICHARD S. MANDEL, ESQ.~~

/Aryn M. Emert/
Aryn M. Emert

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044 and Registration Nos. 4,097,948; 4,192,925; 4,313,981;
4,410,344

Filed: July 8, 2013 and Registered: Feb. 14, February 14, 2012; August 21, 2012; April 2, 2013;
October 1, 2013

For Mark: TOMS

TOD'S S.P.A., —

Petitioner, —: Cancellation No.

v.

MYCOSKIE, LLC,

Respondent. —:

**CONSOLIDATED
CANCELLATION PETITION**

Published in the Official Gazette: April 29, 2014

TOD'S S.P.A.,

Opposer/Petitioner,

v.

MYCOSKIE, LLC,

Applicant/Respondent,

Opposition/Cancellation No.

**AMENDED COMBINED
NOTICE OF OPPOSITION
AND CONSOLIDATED
CANCELLATION PETITION**

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer/Petitioner Tod's S.p.A., an Italian joint stock company located at Via Filippo
Della Valle, 1, Sant'Elpidio A Mare, Ascoli Piceno, 63019, ITALY, believes that it ~~is~~

~~being~~would be damaged by: (1) registration of the TOMS mark (“Applicant/Respondent’s Mark”); shown in Serial No. 86/004,044 filed July 8, 2013 (the “Application”); and (2) registration of Applicant/Respondent’s Mark shown in Registration Nos. 4,097,948; 4,192,925; 4,313,981 and 4,410,344 (the “Registrations”), and having been granted an extension of time to oppose the Application up to and including August 27, 2014, hereby opposes the Application and hereby petitions to cancel the ~~same~~Registrations.






As ~~ground~~grounds for opposition and cancellation, it is alleged that:

1. For many years, Opposer/Petitioner, including its affiliated and related companies (collectively, “Opposer/Petitioner”), has been in the business of selling apparel, including shoes and children’s shoes, bags, eyewear and other goods and accessories and providing retail stores services and online retail store services.

2. Since well prior to Applicant/Respondent’s filing of the Application and the applications that matured into the Registrations at issue in this proceeding or any use by Applicant/Respondent of Applicant/Respondent’s Mark in connection with the goods and services covered by the Application and the Registrations, Opposer/Petitioner has used the mark TOD’S in connection with a wide variety of goods and services, including various goods and services in Classes 9, 18, 25 and 35.

3. As a result of the extensive sales and promotion of its goods and services bearing or offered in connection with Opposer/Petitioner’s TOD’S mark, Opposer/Petitioner has built up highly valuable goodwill in the TOD’S mark, and said goodwill has become closely and uniquely identified and associated with Opposer/Petitioner.

4. Opposer/Petitioner is the owner of several federal trademark registrations for marks containing the TOD'S mark together with other words and/or design elements, including the following registrations which were obtained prior to the filing date of the Application:

Mark	Reg. No.	Intl. Class	Reg. Date
	2,749,125	16, 18, 25, 35	Aug. 12, 2003
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	3,831,949	3, 8, 9, 14, 16, 19, 20, 21, 24, 35	Aug. 10, 2010
	4,036,992	9, 14, 18, 25	Oct. 11, 2011
TOD'S SIGNATURE	4,333,244	3, 9, 14, 18, 25	May 14, 2013

5. On February 14, 2012, the United States Patent and Trademark Office (“USPTO”) issued Applicant/Respondent Registration No. 4,097,948 for Applicant/Respondent’s Mark for “clothing, namely, one piece garments for infants and babies”

in International Class 25. Applicant/Respondent filed the application that matured into such registration on December 2, 2010 and claims a date of first use of November 15, 2008.

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7. On April 2, 2013, the USPTO issued Applicant/Respondent Registration No. 4,313,981 for Applicant/Respondent's Mark for "eyewear, namely, sunglasses, eyeglasses and ophthalmic frames and cases therefore" in International Class 9. Applicant/Respondent filed the application that matured into such registration on October 13, 2011 and claims a date of first use of June 6, 2011.

8. On October 1, 2013, the USPTO issued Applicant/Respondent Registration No. 4,410,344 for Applicant/Respondent's Mark for "on-line retail store services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters; retail stores services featuring footwear, apparel, eyewear, jewelry, books, journals, and gift packs consisting of DVDs and posters" in International Class 35. Applicant/Respondent filed the application that matured into the registration on January 23, 2013 and claims a date of first use of May 15, 2006.

9. Upon information and belief, on July 8, 2013, Applicant/Respondent filed an intent-to-use application in the USPTO, Serial No. 86/004,044, to register the mark TOMS for "Goods made of leather or imitations of leather, namely, card wallets, clutch bags, clutch purses, cosmetic bags sold empty, cosmetic cases sold empty, key bags, key cases, key wallets, and luggage; bags, namely, all-purpose carrying bags, all-purpose athletic bags, and backpacks;

trunks; valises; suitcases; tote bags; travelling bags; garment bags for travel; rucksacks; satchels; holdalls; handbags; shoulder bags; canvas shopping bags; wheeled shopping bags and purses; jewelry pouches; wallets; credit card holders of leather and imitations of leather; pochettes; luggage label holders and tags; collars for pets; and leashes for animals” in International Class 18.

10. Upon information and belief, Applicant/Respondent has not used Applicant/Respondent’s Mark in connection with key bags, key wallets, garment bags for travel, wheeled shopping bags and purses, jewelry pouches, and leashes for animals to date.

11. Upon information and belief, Applicant/Respondent did not have a bona fide intent to use Applicant/Respondent’s Mark in commerce on the products set forth in Paragraph 10 above when it filed the Application.

12. Upon information and belief, Applicant/Respondent has no documents establishing its bona fide intent to use Applicant/Respondent’s Mark on the products set forth in Paragraph 10 above.

13. Upon information and belief, Applicant/Respondent has no concrete plans of any kind to use the products set forth in Paragraph 10 above.

14. 9-The goods and services offered by Applicant/Respondent under Applicant/Respondent’s Mark are identical and/or closely related to the goods and services previously offered by Opposer/Petitioner under Opposer/Petitioner’s TOD’S mark.

15. 10-Applicant/Respondent’s Mark so resembles Opposer/Petitioner’s TOD’S mark as to be likely, when used in connection with the applied for goods and services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant/Respondent’s goods and services have their origin with Opposer/Petitioner and/or that

such goods and services are approved, endorsed or sponsored by Opposer/Petitioner or associated in some way with Opposer/Petitioner.

~~11. Petitioner's TOD'S mark is distinctive and famous and has enjoyed such distinctiveness and fame since long prior to Respondent's filing of the applications that matured into the Registrations.~~

~~12. Respondent's Mark is likely to dilute the distinctiveness of Petitioner's famous TOD'S Mark by blurring.~~

16. ~~13. Petitioner~~ Applicant/Respondent is being injured by the Application and the Registrations because Applicant/Respondent's Mark so resembles Opposer/Petitioner's TOD'S mark as to be likely, when used in connection with Applicant/Respondent's goods and services, (a) to cause confusion, or to cause mistake, or to deceive; (b) to falsely suggest a connection with Opposer/Petitioner and/or its TOD'S branded goods and services; (c) to damage Opposer/Petitioner's valuable goodwill in its TOD'S mark; and (d) to interfere with Opposer/Petitioner's own use and exploitation of its TOD'S mark; ~~and (e) to dilute the distinctiveness of Petitioner's TOD'S mark.~~

WHEREFORE, Opposer/Petitioner, by its attorneys, respectfully requests that its opposition and cancellation petition be sustained and the Application be denied and the Registrations be cancelled.

Dated: New York, New York

~~April 8,~~

December 17, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer/Petitioner

By: /Richard S. Mandel/

Richard S. Mandel
Aryn M. Emert
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Amended Combined Notice of Opposition and Consolidated Cancellation Petition was served upon Respondent on April 8, 2015 the correspondent for the opposed application by mailing a copy thereof by first class mail, postage prepaid, on December 17, 2015 addressed as follows:

Myeoskie, LLC
5404 Jandy Place
Los Angeles, California 90066 Louis S. Ederer
Arnold & Porter LLP
399 Park Ave.
New York, NY 10022

/Aryn M. Emert/
ARYN M. EMERT, ESQ.

/Aryn M. Emert/
Aryn M. Emert

EXHIBIT B

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044
Filed: July 8, 2013
For Mark: TOMS
Published in the *Official Gazette*: April 29, 2014

TOD'S S.P.A.,)	Opposition No.: 91218001
)	
Opposer,)	APPLICANT'S RESPONSES AND
)	OBJECTIONS TO OPPOSER TOD'S
v.)	S.P.A.'S FIRST SET OF
)	INTERROGATORIES
MYCOSKIE, LLC,)	
)	
Applicant.)	
)	

Applicant Mycoskie, LLC ("Mycoskie"), by and through its undersigned counsel, hereby responds to Opposer Tod's S.p.A. ("Opposer")'s First Set of Interrogatories (the "Interrogatories") as follows:

GENERAL OBJECTIONS

Mycoskie makes the following General Objections to Opposer's Interrogatories, which apply to each Interrogatory regardless of whether the General Objections are expressly incorporated into the specific objections below:

1. Mycoskie objects to the Interrogatories to the extent they seek to impose obligations that exceed those under the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120.
2. Mycoskie objects to the Interrogatories to the extent that they may unfairly seek to restrict the facts Mycoskie may rely on at trial, or to the extent that they require Mycoskie to analyze or formulate contentions on matters for which Mycoskie's investigation and discovery have not yet been completed. Since discovery has not been completed, Mycoskie is not yet necessarily in possession of all the facts and documents upon which Mycoskie intends to rely.

Mycoskie reserves the right to supplement, amend, or modify these responses at a future date.

3. Mycoskie objects to the Interrogatories to the extent they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. To the extent that Mycoskie responds to these Interrogatories, it does not concede that the information sought or disclosed is relevant to this proceeding.

4. Mycoskie objects to the Interrogatories to the extent they are vague, overly broad or unduly burdensome.

5. Mycoskie objects to the Interrogatories to the extent they call for, or could be construed to call for, the disclosure of proprietary, trade secret or other commercially protected information for which no necessity and relevance has been shown, and which are without the protection of an appropriate protective order and the implementation of procedures that will ensure the continued confidentiality of such information.

6. Mycoskie objects to the Interrogatories to the extent they seek information that is privileged or exempt from discovery under the attorney-client privilege, work product doctrine, or other privilege or exemption under applicable law. Mycoskie does not waive, and intends to preserve, and is preserving all applicable privileges or protections with respect to any information protected by such a privilege or protection. In the event that any privileged or protected information is disclosed, such disclosure is inadvertent and will not constitute a waiver of any privilege or protection.

7. Mycoskie objects to the Interrogatories to the extent that they fail to specify a relevant time period. The absence of a limited time period makes these Interrogatories overly broad and unduly burdensome in scope.

8. Mycoskie's responses to the Interrogatories are made to the best of Mycoskie's

present knowledge, information and belief. Said responses are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Mycoskie's recollection, are subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Mycoskie's further discovery or investigation. Mycoskie reserves the right to make use of, or to introduce at any hearing or trial, information responsive to the Interrogatories but discovered subsequent to the date of these responses, including, but not limited to, any such information obtained in discovery herein.

9. Mycoskie objects to the Interrogatories on the basis that discovery is ongoing, and expressly reserves the right to amend its responses to the Interrogatories if and when additional information becomes available.

10. Mycoskie preserves its objections as to the competency, relevance, materiality, privilege and admissibility of any information provided in response to these Interrogatories. Mycoskie also expressly reserves the right to object to further discovery into the subject matter of the Interrogatories and to the introduction into of evidence of any responses to the Interrogatories.

11. Mycoskie's responses to the Interrogatories shall not be interpreted to concede the truth of any factual assertion or implication contained in the Interrogatories.

12. Mycoskie objects to the Interrogatories to the extent that they seek information set forth in documents that are outside Mycoskie's possession, custody or control.

13. Mycoskie objects to the Interrogatories to the extent that they seek information that Opposer equally may otherwise obtain from public sources or with less burden and expense by using other means of discovery.

14. Mycoskie objects to the Interrogatories to the extent that they are cumulative, duplicative, repetitive, or overlapping.

15. Mycoskie reserves the right to object on any ground at any time to such other or supplemental interrogatories as Opposer may propound involving or relating to the subject matter of these Interrogatories.

16. Mycoskie objects to the Interrogatories pursuant to Federal Rule of Civil Procedure 26(b)(2)(C) to the extent that the burden and/or expense of attempting to ascertain the requested information outweighs any conceivable benefit considering the needs of this proceeding, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

17. Mycoskie objects to the definition of "Applicant" on the grounds that it is overly broad and unduly burdensome and purports to impose obligations on Mycoskie to produce information and/or documents outside its possession, custody or control. For avoidance of doubt, Mycoskie's instant responses incorporate information and documents obtained from its parent company, TOMS Shoes, LLC, and said company's predecessors-in-interest.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 13:

State whether Applicant has any documentation, including, without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, reflecting Applicant's bona fide intention prior to or as of July 8, 2013 to use Applicant's Mark in the United States or in commerce in connection with each of the goods identified in the Application, and if so, identify all such documentation.

RESPONSE TO INTERROGATORY NO. 13:

Mycoskie incorporates by reference the above-stated General Objections as if fully set forth herein. Mycoskie further objects to this Interrogatory on the basis that it contains multiple subparts. Mycoskie further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome in scope. Mycoskie further objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence in that it seeks materials that are not relevant to the subject matter of this proceeding, namely the registrability of Mycoskie's standard character TOMS word mark in International Class 18.

Subject to and without waiving the foregoing objections, Mycoskie states that it will produce non-privileged documents, pursuant to Fed. R. Civ. P. 33(d), sufficient to identify its bona fide intention prior to or as of July 8, 2013 to use the TOMS mark in commerce in connection with each of the goods identified in its Application to register the TOMS standard character word

mark in International Class 18.

INTERROGATORY NO. 14:

Describe in detail all steps taken by Applicant prior to July 8, 2013 in connection with the intended use of Applicant's Mark in the United States or in commerce in connection with each of the goods identified in the Application.

RESPONSE TO INTERROGATORY NO. 14:

Mycoskie incorporates by reference the above-stated General Objections as if fully set forth herein. Mycoskie further objects to this Interrogatory on the grounds that the phrase "all steps taken" is vague and ambiguous as used therein. Mycoskie further objects to this Interrogatory on the basis that it is overly broad and unduly burdensome in scope in that it seeks a detailed description of "all steps taken" by Mycoskie in connection with the intended use of Mycoskie's TOMS mark in International Class 18 prior to July 8, 2013 — in other words, a detailed description of every action relating to the design, development and distribution of products bearing the TOMS mark in International Class 18 prior to the filing of Mycoskie's application to register the TOMS mark in International Class 18. Mycoskie further objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence in that it seeks information that is not relevant to the subject matter of this proceeding, namely the registrability of Mycoskie's standard character TOMS word mark in International Class 18.

Subject to and without waiving the foregoing objections, Mycoskie states that work began on handbag concepts on or about May 22, 2013, and that continuing efforts to develop a handbag line under Mycoskie's TOMS mark followed.

INTERROGATORY NO. 15:

Describe in detail all steps taken by Applicant on or after July 8, 2013 in connection with the intended use of Applicant's Mark in the United States or in commerce in connection with each of the goods identified in the Application.

RESPONSE TO INTERROGATORY NO. 15:

Mycoskie incorporates by reference the above-stated General Objections as if fully set forth herein. Mycoskie further objects to this Interrogatory on the grounds that the phrase “all steps taken” is vague and ambiguous as used therein. Mycoskie further objects to this Interrogatory on the basis that it is overly broad and unduly burdensome in scope in that it seeks a detailed description of “all steps taken” by Mycoskie in connection with the intended use of Mycoskie’s TOMS mark in International Class 18 on or after July 8, 2013 — in other words, a detailed description of every action relating to the design, development and distribution of products bearing the TOMS mark in International Class 18 after the filing of Mycoskie’s application to register the TOMS mark in International Class 18. Mycoskie further objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence in that it seeks information that is not relevant to the subject matter of this proceeding, namely the registrability of Mycoskie’s standard character TOMS word mark in International Class 18.

Subject to and without waiving the foregoing objections, Mycoskie states that it will produce non-privileged documents, pursuant to Fed. R. Civ. P. 33(d), sufficient to demonstrate the intended use the TOMS mark in connection with goods covered by International Class 18 that postdates July 8, 2013.

Dated: February 17, 2015

ARNOLD & PORTER LLP

By: 

Louis S. Ederer
399 Park Avenue
New York, New York 10022
Tel: 212.715.1000
Fax: 212.715.1399

*Attorneys for Applicant
Mycoskie, LLC*

**Verification for Applicant Mycoskie, LLC's Responses to
Opposer Tod's S.P.A.'s First Set of Interrogatories**

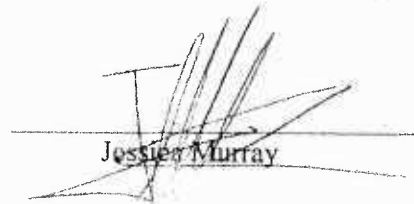
I, Jessica Murray, declare:

I am Intellectual Property Director of Toms Shoes LLC, parent company of applicant Mycoskie LLC in the above-entitled proceeding, and I am authorized to make this verification on applicant's behalf.

I have read the foregoing responses contained in **RESPONSES AND OBJECTIONS TO OPPOSER TOD'S S.P.A.'S FIRST SET OF INTERROGATORIES** and know the contents thereof. Because the matters stated in the document identified above are a corporate response, such matters are not all necessarily within my personal knowledge or within the personal knowledge of any single individual.

Subject to these limitations, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Los Angeles, California, on this 17th day of February, 2015.


Jessica Murray

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**RESPONSES AND OBJECTIONS TO OPPOSER TOD'S S.P.A.'S FIRST SET OF
INTERROGATORIES** was served upon the following attorneys of record for Opposer Tod's
S.p.A. by U.S. Mail, this 17th day of February, 2015:

Richard S. Mandel, Esq.
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799

Attorneys for Opposer Tod's S.p.A.

A handwritten signature in dark ink, appearing to read 'Matthew T. Salzmann', is written over a horizontal line.

Matthew T. Salzmann

In re Application Serial No. 86/004,044
Filed: July 8, 2013
For Mark: TOMS
Published in the *Official Gazette*: April 29, 2014

Applicant.

**APPLICANT'S RESPONSES AND
OBJECTIONS TO OPPOSER TOD'S
S.P.A.'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND
THINGS**

GENERAL OBJECTIONS

2. Mycoskie objects to the Requests to the extent they are vague, overbroad and unduly burdensome, and seek to impose obligations that exceed those under the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120.

3. Mycoskie objects to the Requests to the extent they call for, or could be construed to call for, the disclosure of proprietary, trade secret or other commercially protected information for which no necessity and relevance has been shown, and which are without the protection of an appropriate protective order and the implementation of procedures that will ensure the continued confidentiality of such information.

4. Mycoskie objects to the Requests to the extent they seek documents that are privileged or exempt from discovery under the attorney-client privilege, work product doctrine, or other privilege or exemption under applicable law. Mycoskie does not waive, and intends to preserve, any applicable privilege or protection. In the event that any privileged or protected document or information is disclosed, such disclosure is inadvertent and will not constitute a waiver of any applicable privilege or protection.

5. Mycoskie objects to the Requests to the extent they seek documents outside of Mycoskie's possession, custody or control.

6. Mycoskie objects to the Requests to the extent they seek documents that are equally available to Tod's or that are otherwise available in the public domain. The burden of obtaining such documents is the same for Mycoskie as it is for Tod's.

7. Mycoskie objects to the Requests pursuant to Federal Rule of Civil Procedure 26(b)(2)(C) to the extent that the burden and/or expense of attempting to ascertain the requested materials outweighs any conceivable benefit considering the needs of this proceeding, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

8. Mycoskie objects to the Requests to the extent they are unintelligible and/or incapable of being responded to in their current form. Accordingly, Mycoskie will produce

documents which it believes are responsive to each such Request and are relevant to the subject matter of this proceeding.

9. Mycoskie objects to the Requests pursuant to Federal Rule of Civil Procedure 26(b)(2)(C) to the extent that they are cumulative, duplicative, repetitive, and/or overlapping, or that the requested information can be obtained from some other source that is more convenient, less burdensome, or less expensive.

10. Mycoskie's responses to the Requests are made to the best of its present knowledge, information and belief. Said responses are at all times subject to such additional or different documentation or information that discovery or further investigation may disclose, and, while based on the present state of Mycoskie's recollection, are subject to such refreshment of recollection, and such additional knowledge of facts, as may result from Mycoskie's further discovery or investigation. Mycoskie reserves the right to make use of, or to introduce at any hearing or trial, documents responsive to the Requests but discovered subsequent to the date of these responses, including, but not limited to, any such documents obtained through subsequent discovery.

11. Mycoskie objects to each and every Request that does not limit itself to a clear and reasonably relevant time period. The absence of a limited time period makes the Requests overly broad and unduly burdensome in scope.

12. Mycoskie reserves all objections or other questions as to the competency, relevance, materiality, privilege or admissibility as evidence in any subsequent proceeding or trial of this or any other action, for any purpose whatsoever, of its responses herein, and any document or thing identified or provided in response to the Requests.

13. Mycoskie objects to the Requests to the extent they seek to require Mycoskie to

produce documents at a time and in a manner not mutually agreed upon or mandated by the Trademark Trial and Appeal Board. Mycoskie's production of documents will be made in a reasonable manner and on a rolling basis, subject to any subsequent agreement between the parties.

14. Mycoskie objects to the definition of "Applicant" on the grounds that it is overly broad and unduly burdensome and purports to impose obligations on Mycoskie to produce documents outside its possession, custody or control. For avoidance of doubt, Mycoskie's instant responses incorporate information and documents obtained from its parent company, TOMS Shoes, LLC, and said company's predecessors-in-interest.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 25

All documents, including, without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, reflecting Applicant's bona fide intention prior to or as of July 8, 2013 to use Applicant's Mark in the United States or in commerce in connection

with each of the goods identified in the Application.

RESPONSE TO DOCUMENT REQUEST NO. 25:

Mycoskie incorporates by reference the above-stated General Objections as if fully set forth herein. Mycoskie further objects to this Request on the basis that it is overly broad and unduly burdensome in scope in that it seeks the production of “[a]ll documents” concerning Mycoskie’s “bona fide intention prior to or as of July 8, 2013 to use” Mycoskie’s TOMS mark in International Class 18. Mycoskie further objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence in that it seeks materials that are not relevant to the subject matter of this proceeding, namely the registrability of Mycoskie’s standard character TOMS word mark in International Class 18. Mycoskie further objects to this Request to the extent it seeks documents that are privileged or exempt from discovery under the attorney-client privilege, work product doctrine, or other privilege or exemption under applicable law.

Subject to and without waiving the foregoing objections, Mycoskie states that it will produce relevant, responsive, non-privileged documents sufficient to demonstrate a bona fide intent to the use the TOMS mark in connection with goods covered by International Class 18 that predate July 8, 2013, if any, to the extent such documents exist within its possession, custody, or control and are located following a reasonably diligent search.

DOCUMENT REQUEST NO. 26

All documents concerning any steps taken by Applicant prior to July 8, 2013 in connection with the intended use of Applicant’s Mark in the United States or in commerce in connection with each of the goods identified in the Application.

RESPONSE TO DOCUMENT REQUEST NO. 26:

Mycoskie incorporates by reference the above-stated General Objections as if fully set forth herein. Mycoskie further objects to this Request to the extent it is duplicative of Request

No. 25. Mycoskie further objects to this Request on the grounds that the phrase “any steps taken” is vague and ambiguous as used therein. Mycoskie further objects to this Request on the basis that it is overly broad and unduly burdensome in scope in that it seeks the production of “[a]ll documents” concerning “any steps taken” by Mycoskie in connection with the intended use of Mycoskie’s TOMS mark in International Class 18 prior to July 8, 2013 — in other words, every document concerning the design, development and distribution of products bearing the TOMS mark in International Class 18 prior to the filing of Mycoskie’s application to register the TOMS mark in International Class 18. Mycoskie further objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence in that it seeks materials that are not relevant to the subject matter of this proceeding, namely the registrability of Mycoskie’s standard character TOMS word mark in International Class 18. Mycoskie further objects to this Request to the extent it seeks documents that are privileged or exempt from discovery under the attorney-client privilege, work product doctrine, or other privilege or exemption under applicable law.

Subject to and without waiving the foregoing objections, Mycoskie states that it will produce relevant, responsive, non-privileged documents sufficient to demonstrate a bona fide intent to use the TOMS mark in connection with goods covered by International Class 18 that predate July 8, 2013, if any, to the extent such documents exist within its possession, custody, or control and are located following a reasonably diligent search.

DOCUMENT REQUEST NO. 27

All documents concerning any steps taken by Applicant on or after July 8, 2013 in connection with the intended use of Applicant’s Mark in the United States or in commerce in connection with each of the goods identified in the Application.

RESPONSE TO DOCUMENT REQUEST NO. 27:

Mycoskie incorporates by reference the above-stated General Objections as if fully set

forth herein. Mycoskie further objects to this Request on the grounds that the phrase “any steps taken” is vague and ambiguous as used therein. Mycoskie further objects to this Request on the basis that it is overly broad and unduly burdensome in scope in that it seeks the production of “[a]ll documents” concerning “any steps taken” by Mycoskie in connection with the intended use of Mycoskie’s TOMS mark in International Class 18 on or after July 8, 2013. Mycoskie further objects to this Request to the extent it seeks documents that are privileged or exempt from discovery under the attorney-client privilege, work product doctrine, or other privilege or exemption under applicable law.

Subject to and without waiving the foregoing objections, Mycoskie states that it will produce relevant, responsive, non-privileged documents sufficient to demonstrate a bona fide intent to the use the TOMS mark in connection with goods covered by International Class 18, if any, to the extent such documents exist within its possession, custody, or control and are located following a reasonably diligent search.

Dated: February 17, 2015

ARNOLD & PORTER LLP

By: 

Louis S. Ederer
399 Park Avenue
New York, New York 10022
Tel: 212.715.1000
Fax: 212.715.1399

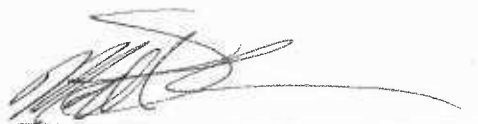
Attorneys for Applicant
Mycoskie, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**APPLICANT'S RESPONSES AND OBJECTIONS TO OPPOSER TOD'S S.P.A.'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served upon the
following attorneys of record for Opposer Tod's S.p.A. by U.S. mail, this 17th day of February,
2015:

Richard S. Mandel, Esq.
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799

Attorneys for Opposer Tod's S.p.A.

A handwritten signature in dark ink, appearing to read 'Matthew T. Salzmann', is written over a horizontal line.

Matthew T. Salzmann

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86/004,044
Filed: July 8, 2013
For Mark: TOMS
Published in the Official Gazette: April 29, 2014

In re Registration Nos. 4,097,948; 4,192,925; 4,313,981; 4,410,344
Registered: February 14, 2012; August 21, 2012; April 2, 2013; October 1, 2013
For Mark: TOMS

TOD'S S.P.A.,

Opposer,

v.

Opposition No. 91218001

MYCOSKIE, LLC,

Applicant.

TOD'S S.P.A.,

Petitioner,

v.

MYCOSKIE, LLC,

Cancellation No. 92061234

Respondent.

----- X

**OPPOSER/PETITIONER'S 30(b)(6) NOTICE
OF DEPOSITION OF MYCOSKIE, LLC**

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer/Petitioner Tod's S.p.A. will take the deposition upon oral examination of Applicant/Respondent Mycoskie, LLC ("Mycoskie") on December 3, 2015 commencing at 9:30 a.m. at the offices of Mitchell Silberberg & Knupp LLP, 11377 W. Olympic

Boulevard, Los Angeles, CA 90064 before a notary public or some other person duly authorized by law to administer oaths, and continuing from day to day until completed. Mycoskie shall designate one or more officers, directors, managing agents or other persons who can testify on its behalf with respect to the topics listed in Exhibit A hereto.

Dated: New York, New York
October 1, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer/Petitioner

By: 

Richard S. Mandel
Aryn M. Emert
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

EXHIBIT A

DEFINITIONS

1. “Mycoskie” means Mycoskie, LLC and all parent, subsidiary, related, predecessor and/or successor entities, licensees, divisions, employees, agents and/or representatives thereof.
2. “Opposer/Petitioner” means Tod’s S.p.A. and all parent, subsidiary, related, predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.
3. “Opposer/Petitioner’s TOD’S Marks” means the marks used, registered and/or applied to be registered by Opposer/Petitioner consisting of or incorporating the word TOD’S, alone or with other words and/or with stylized or design elements.
4. The term “Application” means Application Serial No. 86/004,044 applied for by Mycoskie.
5. The term “Mycoskie’s TOMS Mark” means the standard character TOMS word mark that is the subject of the Application.
6. The term “Mycoskie’s TOMS Design Mark” means the mark depicted below in which the terms TOMS appears in the middle of three equally sized stripes, regardless of the particular color of any of the stripes:



7. The term “Registrations” means Registration Nos. 4,097,948; 4,192,925; 4,313,981; and 4,410,344 owned by Mycoskie.

TOPICS

1. The conception, creation, design, clearance and/or selection of Mycoskie's TOMS Mark and Mycoskie's TOMS Design Mark.
2. The adoption and use of Mycoskie's TOMS Mark and Mycoskie's TOMS Design Mark.
3. The channels of trade, including all retail stores, in which products bearing or sold in connection with Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark are offered for sale.
4. Each product or service on or in connection with which Mycoskie uses or has used Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark and the date of first use in connection with each such product or service, including each product or service identified in the Application or the Registrations.
5. The annual sales made under Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark for each year from the date of first use to the present with respect to each different product or service sold under or in connection with such marks.
6. Each different stylization and/or design format in which Mycoskie is using or has used marks comprising or containing the word TOMS, and the manner and scope of such usage, including without limitation, the format and presentation of the marks and the materials on which such marks have been used.
7. The advertising, marketing and/or promotion of goods or services sold or offered under or in connection with Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark.

8. All trademark disputes involving Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark.
9. Mycoskie's knowledge of Opposer/Petitioner's TOD'S Marks.
10. Any consumer studies, market research, focus groups, surveys, polls or other research, studies or data compiled or commissioned by or on behalf of Mycoskie concerning Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark.
11. Any actual confusion between Opposer/Petitioner and Mycoskie or their respective marks or goods or services.
12. The target audience for goods or services sold or intended to be sold in connection with Mycoskie's TOMS Mark and/or Mycoskie's TOMS Design Mark.
13. Any business plans, marketing plans, memos, correspondence or draft proposals of any kind reflecting Mycoskie's bona fide intention prior to or as of July 8, 2013 to use Mycoskie's TOMS Mark in the United States in connection with each of the goods identified in the Application.
14. All steps taken by Mycoskie prior to July 8, 2013 in connection with the intended use of Mycoskie's TOMS Mark in the United States in connection with each of the goods identified in the Application.
15. All steps taken by Mycoskie on or after July 8, 2013 in connection with the intended use of Mycoskie's TOMS Mark in the United States in connection with each of the goods specified in the Application.
16. Any instructions on the manner in which Mycoskie's TOMS Mark or any other marks containing or comprising the word TOMS, including, without limitation, Mycoskie's

TOMS Design Mark, is to be used, including any style guides concerning the usage of such marks.

17. The co-existence of “identical and/or related products and services” under Opposer/Petitioner’s TOD’S Marks and Mycoskie’s TOMS Mark, as alleged in paragraph 5 of Applicant’s “Facts Common To All Affirmative Defenses” in its answers to the notice of opposition and cancellation petition in this proceeding.

18. All use of marks comprising or containing the term TOMS in a form other than shown in Mycoskie’s TOMS Design Mark.

19. The extent to which and/or contexts in which Mycoskie uses marks comprising or containing the word TOMS in a form other than shown in Mycoskie’s TOMS Design Mark.

20. All registrations owned or applications filed by Mycoskie for Mycoskie’s TOMS Mark and/or Mycoskie’s TOMS Design Mark, and the policies, procedures and decisions concerning the registration or attempted registration of such marks.

21. Any expansion plans with respect to the use of Mycoskie’s TOMS Mark and/or Mycoskie’s TOMS Design Mark.

22. All communications between Opposer/Petitioner and Mycoskie concerning the present dispute.

23. All documents produced by Mycoskie in response to Opposer/Petitioner’s First Request for Production of Documents and Things and the efforts made to collect documents responsive to such requests.

24. Mycoskie’s responses to Opposer/Petitioner’s First Set of Interrogatories.

25. The affirmative defenses alleged by Mycoskie in its answers to the notice of opposition and cancellation petition in this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Opposer/Petitioner's Notice of 30(b)(6) Deposition of Mycoskie, LLC was served upon Applicant/Respondent's counsel of record on October 1, 2015 by first class mail, postage prepaid addressed to:

Louis S. Ederer, Esq.
Arnold & Porter LLP
399 Park Avenue
New York, New York 10022

A handwritten signature in blue ink, appearing to read 'Richard S. Mandel', is written over a horizontal line.

Richard S. Mandel, Esq.

EXHIBIT D

REDACTED - CONFIDENTIAL